IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 23RD NOVEMBER 2006 / 2ND AGRAHAYANA 1928

Crl.MC.No. 471 of 2003(D)

CC.371/2002 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOTTARAKKARA

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PETITIONER: 4TH ACCUSED

SARATHY DASAN, AGED 38,
S/O. LATE M.P.DAS, ASSISTANT MANAGER,
M/S.TATA FINANCE LTD., G-4, LAKE SIDE APARTMENTS,
THOPPIL KADAVU, KOLLAM.

BY ADV. SRI.VARGHESE C.KURIAKOSE
SRI.PRAVEEN K. JOY
SRI.JACOB SEBASTIAN
SRI.SANTHARAM.P

RESPONDENTS: CHARGE WITNESS NO.1

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1. STATE OF KERALA,
REPRESENTED BY C.I. OF POLICE,
KADAKKAL.

2. B.RAVEENDRAN NAIR, AGED 43,
S/O. BALAN NAIR, KADAKKALAMMA STORES,
KADAKKAL.

BY ADV. SRI.D.JAYACHANDRAN
SRI. GIKKU JACOB, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 23/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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ORDER ON C.M.P. NO. 492 OF 2003 IN CRL. M.C. NO. 471/2003

DISMISSED

23.11.2006 SD/- K.R. UDAYABHANU, JUDGE.

True Copy

P.A. to Judge.

K.R. UDAYABHANU, J

CRL. M.C. NO. 471 OF 2003

Dated this the 23rdday of November 2006

ORDER

The petitioner, who is the 4th accused in C.C. 371/2002 in the court of Judicial First Class Magistrate II, Kottarakkara with respect to the offences under sections 379, 109, 180 read with section 34 I.P.C., has sought for setting aside the same specifically on the ground that the vehicle was covered by the hire purchase agreement. It is submitted that the second respondent has availed the facility of hire purchase with Messrs. Tata Finance Ltd., wherein the petitioner was employed as Assistant Manager. As the second respondent committed default in remitting the monthly instalments the vehicle was repossessed. It is further submitted that the vehicle was also returned to the second respondent as the second respondent had obtained an order of police protection prior to the act of repossession and the contempt case initiated was closed vide Annexure 5 order. It is submitted that the petitioner was not aware of the existence of order of this court providing police protection. The petitioner has produced Annexure-1, the copy of hire purchase agreement. Evidently, repossession in consonance of terms of the hire purchase transaction

would not amount to an offence vide the decisions in **Barudan Dagar v. State of Kerala** (1986 KLT 430), **Charanjit Singh Chadha and others v. Sudhir Mehra** (2001 (7) SCC 417). In view of the above cited decisions, I find that the proceedings pending as C.C. 371/2002 in the court of JFCM II, Kottarakkara cannot be sustained. In the result C.C. 371/2002 in the file of JFCM II, Kottarakkara is herewith quashed.

K.R. UDAYABHANU, JUDGE.

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